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[Report No. 108–219]

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2003

Mr. WOLF (for himself and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 18, 2003

Additional sponsors: Mr. FRANK of Massachusetts, Mr. SANDERS, Mr. BARTLETT of Maryland, Mr. ENGLISH, Mr. McDERMOTT, Mr. FILNER, Mr. GONZALEZ, Mr. RANGEL, Ms. CORRINE BROWN of Florida, Ms. LEE, Mr. PITTS, Mr. WEINER, Mr. BURGESS, Mr. GREEN of Wisconsin, Mr. SOUDER, Mr. ADERHOLT, Mr. FORBES, Mrs. JO ANN DAVIS of Virginia, Mr. CLYBURN, Mr. HOEKSTRA, Mr. RYUN of Kansas, Mr. WELDON of Florida, Mrs. MYRICK, Mr. THORNBERRY, Mr. TERRY, Mr. TIAHRT, Mr. NADLER, Mr. GOODLATTE, Mr. COBLE, Mr. STRICKLAND, and Mr. COOPER

JULY 18, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 9, 2003]

A BILL

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Prison Rape Reduction Act of 2003”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
7 *Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. National prison rape statistics, data, and research.

Sec. 5. Prison rape prevention and prosecution.

Sec. 6. Grants to protect inmates and safeguard communities.

Sec. 7. National prison rape reduction commission.

Sec. 8. Adoption and effect of national standards.

Sec. 9. Requirement that accreditation organizations adopt accreditation stand-
ards.

Sec. 10. Definitions.

8 **SEC. 2. FINDINGS.**

9 *Congress makes the following findings:*

10 (1) *2,100,146 persons were incarcerated in the*
11 *United States at the end of 2001: 1,324,465 in Fed-*
12 *eral and State Prisons and 631,240 in county and*

1 *local jails. In 1999, there were more than 10,000,000*
2 *separate admissions to and discharges from prisons*
3 *and jails.*

4 *(2) Insufficient research has been conducted and*
5 *insufficient data reported on the extent of prison*
6 *rape. However, experts have conservatively estimated*
7 *that at least 13 percent of the inmates in the United*
8 *States have been sexually assaulted in prison. Many*
9 *inmates have suffered repeated assaults. Under this*
10 *estimate, nearly 200,000 inmates now incarcerated*
11 *have been or will be the victims of prison rape. The*
12 *total number of inmates who have been sexually as-*
13 *saulted in the past 20 years likely exceeds 1,000,000.*

14 *(3) Inmates with mental illness are at increased*
15 *risk of sexual victimization. America's jails and pris-*
16 *ons house more mentally ill individuals than all of*
17 *the Nation's psychiatric hospitals combined. As many*
18 *as 16 percent of inmates in state prisons and jails,*
19 *and 7 percent of Federal inmates, suffer from mental*
20 *illness.*

21 *(4) Young first-time offenders are at increased*
22 *risk of sexual victimization. Juveniles are 5 times*
23 *more likely to be sexually assaulted in adult rather*
24 *than juvenile facilities—often within the first 48*
25 *hours of incarceration.*

1 (5) *Most prison staff are not adequately trained*
2 *or prepared to prevent, report, or treat inmate sexual*
3 *assaults.*

4 (6) *Prison rape often goes unreported, and in-*
5 *mate victims often receive inadequate treatment for*
6 *the severe physical and psychological effects of sexual*
7 *assault—if they receive treatment at all.*

8 (7) *HIV and AIDS are major public health*
9 *problems within America’s correctional facilities. In*
10 *2000, 25,088 inmates in Federal and State prisons*
11 *were known to be infected with HIV/AIDS. In 2000,*
12 *HIV/AIDS accounted for more than 6 percent of all*
13 *deaths in Federal and State prisons. Infection rates*
14 *for other sexually transmitted diseases, tuberculosis,*
15 *and hepatitis B and C are also far greater for pris-*
16 *oners than for the American population as a whole.*
17 *Prison rape undermines the public health by contrib-*
18 *uting to the spread of these diseases, and often giving*
19 *a potential death sentence to its victims.*

20 (8) *Prison rape endangers the public safety by*
21 *making brutalized inmates more likely to commit*
22 *crimes when they are released—as 600,000 inmates*
23 *are each year.*

24 (9) *The frequently interracial character of prison*
25 *sexual assaults significantly exacerbates interracial*

1 *tensions, both within prison and, upon release of per-*
2 *petrators and victims from prison, in the community*
3 *at large.*

4 (10) *Prison rape increases the level of homicides*
5 *and other violence against inmates and staff, and the*
6 *risk of insurrections and riots.*

7 (11) *Victims of prison rape suffer severe physical*
8 *and psychological effects that hinder their ability to*
9 *integrate into the community and maintain stable*
10 *employment upon their release from prison. They are*
11 *thus more likely to become homeless and/or require*
12 *government assistance.*

13 (12) *Members of the public and government offi-*
14 *cials are largely unaware of the epidemic character of*
15 *prison rape and the day-to-day horror experienced by*
16 *victimized inmates.*

17 (13) *The high incidence of sexual assault within*
18 *prisons involves actual and potential violations of the*
19 *United States Constitution. In Farmer v. Brennan,*
20 *511 U.S. 825 (1994), the Supreme Court ruled that*
21 *deliberate indifference to the substantial risk of sexual*
22 *assault violates prisoners' rights under the Cruel and*
23 *Unusual Punishments Clause of the Eighth Amend-*
24 *ment. The Eighth Amendment rights of State and*
25 *local prisoners are protected through the Due Process*

1 *Clause of the Fourteenth Amendment. Pursuant to*
2 *Congress's power under Section Five of the Fourteenth*
3 *Amendment, Congress may take action to enforce*
4 *those rights in States where officials have dem-*
5 *onstrated such indifference. States that do not take*
6 *basic steps to abate prison rape by adopting stand-*
7 *ards that do not generate significant additional ex-*
8 *penditures demonstrate such indifference. Therefore,*
9 *such States are not entitled to the same level of Fed-*
10 *eral benefits as other States.*

11 *(14) The high incidence of prison rape under-*
12 *mines the effectiveness and efficiency of United States*
13 *Government expenditures through grant programs*
14 *such as those dealing with health care; mental health*
15 *care; disease prevention; crime prevention, investiga-*
16 *tion, and prosecution; prison construction, mainte-*
17 *nance, and operation; race relations; poverty; unem-*
18 *ployment and homelessness. The effectiveness and effi-*
19 *ciency of these Federally funded grant programs are*
20 *compromised by officials' failure to adopt policies and*
21 *procedure that reduce the incidence of prison rape in*
22 *that the high incidence of prison rape—*

23 *(A) increases the costs incurred by Federal,*
24 *State, and local jurisdictions to administer their*
25 *prison systems;*

1 (B) increases the levels of violence, directed
2 at inmates and at staff, within prisons;

3 (C) increases health care expenditures, both
4 inside and outside of prison systems, and reduces
5 the effectiveness of disease prevention programs
6 by substantially increasing the incidence and
7 spread of HIV, AIDS, tuberculosis, hepatitis B
8 and C, and other diseases;

9 (D) increases mental health care expendi-
10 tures, both inside and outside of prison systems,
11 by substantially increasing the rate of post-trau-
12 matic stress disorder, depression, suicide, and the
13 exacerbation of existing mental illnesses among
14 current and former inmates;

15 (E) increases the risks of recidivism, civil
16 strife, and violent crime by individuals who have
17 been brutalized by prison rape; and

18 (F) increases the level of interracial tensions
19 and strife within prisons and, upon release of
20 perpetrators and victims, in the community at
21 large.

22 (15) The high incidence of prison rape has a sig-
23 nificant effect on interstate commerce because it in-
24 creases substantially—

1 (A) the costs incurred by Federal, State,
2 and local jurisdictions to administer their prison
3 systems;

4 (B) the incidence and spread of HIV, AIDS,
5 tuberculosis, hepatitis B and C, and other dis-
6 eases, contributing to increased health and med-
7 ical expenditures throughout the Nation;

8 (C) the rate of post-traumatic stress dis-
9 order, depression, suicide, and the exacerbation
10 of existing mental illnesses among current and
11 former inmates, contributing to increased health
12 and medical expenditures throughout the Nation;
13 and

14 (D) the risk of recidivism, civil strife, and
15 violent crime by individuals who have been bru-
16 talized by prison rape.

17 **SEC. 3. PURPOSES.**

18 *The purposes of this Act are to—*

19 (1) establish a zero-tolerance standard for the in-
20 cidence of prison rape in prisons in the United
21 States;

22 (2) make the prevention of prison rape a top pri-
23 ority in each prison system;

1 (3) develop and implement national standards
2 for the detection, prevention, reduction, and punish-
3 ment of prison rape;

4 (4) increase the available data and information
5 on the incidence of prison rape, consequently improv-
6 ing the management and administration of correc-
7 tional facilities;

8 (5) standardize the definitions used for collecting
9 data on the incidence of prison rape;

10 (6) increase the accountability of prison officials
11 who fail to detect, prevent, reduce, and punish prison
12 rape;

13 (7) protect the Eighth Amendment rights of Fed-
14 eral, State, and local prisoners;

15 (8) increase the efficiency and effectiveness of
16 Federal expenditures through grant programs such as
17 those dealing with health care; mental health care;
18 disease prevention; crime prevention, investigation,
19 and prosecution; prison construction, maintenance,
20 and operation; race relations; poverty; unemployment;
21 and homelessness; and

22 (9) reduce the costs that prison rape imposes on
23 interstate commerce.

1 **SEC. 4. NATIONAL PRISON RAPE STATISTICS, DATA, AND**
2 **RESEARCH.**

3 (a) *ANNUAL COMPREHENSIVE STATISTICAL RE-*
4 *VIEW.—*

5 (1) *IN GENERAL.—The Bureau of Justice Statis-*
6 *tics of the Department of Justice (in this section re-*
7 *ferred to as the “Bureau”) shall carry out, for each*
8 *calendar year, a comprehensive statistical review and*
9 *analysis of the incidence and effects of prison rape.*
10 *The statistical review and analysis shall include, but*
11 *not be limited to the identification of the common*
12 *characteristics of—*

13 (A) *both victims and perpetrators of prison*
14 *rape; and*

15 (B) *prisons and prison systems with a high*
16 *incidence of prison rape.*

17 (2) *CONSIDERATIONS.—In carrying out para-*
18 *graph (1), the Bureau shall consider the following:*

19 (A) *How rape should be defined for the pur-*
20 *poses of the statistical review and analysis.*

21 (B) *How the Bureau should collect informa-*
22 *tion about staff-on-inmate sexual assault.*

23 (C) *How the Bureau should collect informa-*
24 *tion beyond inmate self-reports of prison rape.*

1 (D) *How the Bureau should adjust the data*
2 *in order to account for differences among prisons*
3 *as required by subsection (c)(3).*

4 (E) *The categorization of prisons as re-*
5 *quired by subsection (c)(4).*

6 (F) *Whether a preliminary study of prison*
7 *rape should be conducted to inform the method-*
8 *ology of the comprehensive statistical review.*

9 (3) *SOLICITATION OF VIEWS.—The Bureau of*
10 *Justice Statistics shall solicit views from representa-*
11 *tives of the following: State departments of correction;*
12 *county and municipal jails; juvenile correctional fa-*
13 *cilities; former inmates; victim advocates; researchers;*
14 *and other experts in the area of sexual assault.*

15 (4) *SAMPLING TECHNIQUES.—The review and*
16 *analysis under paragraph (1) shall be based on a*
17 *random sample, or other scientifically appropriate*
18 *sample, of not less than 10 percent of all Federal,*
19 *State, and county prisons, and a representative sam-*
20 *ple of municipal prisons. The selection shall include*
21 *at least one prison from each State. The selection of*
22 *facilities for sampling shall be made at the latest*
23 *practicable date prior to conducting the surveys and*
24 *shall not be disclosed to any facility or prison system*
25 *official prior to the time period studied in the survey.*

1 *Selection of a facility for sampling during any year*
2 *shall not preclude its selection for sampling in any*
3 *subsequent year.*

4 (5) *SURVEYS.—In carrying out the review and*
5 *analysis under paragraph (1), the Bureau shall, in*
6 *addition to such other methods as the Bureau con-*
7 *siders appropriate, use surveys and other statistical*
8 *studies of current and former inmates from a sample*
9 *of Federal, State, county, and municipal prisons. The*
10 *Bureau shall ensure the confidentiality of each survey*
11 *participant.*

12 (6) *PARTICIPATION IN SURVEY.—Federal, State,*
13 *or local officials or facility administrators that re-*
14 *ceive a request from the Bureau under subsection*
15 *(a)(4) or (5) will be required to participate in the na-*
16 *tional survey and provide access to any inmates*
17 *under their legal custody.*

18 (b) *REVIEW PANEL ON PRISON RAPE.—*

19 (1) *ESTABLISHMENT.—To assist the Bureau in*
20 *carrying out the review and analysis under subsection*
21 *(a), there is established, within the Department of*
22 *Justice, the Review Panel on Prison Rape (in this*
23 *section referred to as the “Panel”).*

24 (2) *MEMBERSHIP.—*

1 (A) *COMPOSITION.*—*The Panel shall be*
2 *composed of 3 members, each of whom shall be*
3 *appointed by the Attorney General, in consulta-*
4 *tion with the Secretary of Health and Human*
5 *Services.*

6 (B) *QUALIFICATIONS.*—*Members of the*
7 *Panel shall be selected from among individuals*
8 *with knowledge or expertise in matters to be*
9 *studied by the Panel.*

10 (3) *PUBLIC HEARINGS.*—

11 (A) *IN GENERAL.*—*The duty of the Panel*
12 *shall be to carry out, for each calendar year,*
13 *public hearings concerning the operation of the*
14 *three prisons with the highest incidence of prison*
15 *rape and the two prisons with the lowest inci-*
16 *dence of prison rape in each category of facilities*
17 *identified under subsection (c)(4). The Panel*
18 *shall hold a separate hearing regarding the three*
19 *Federal or State prisons with the highest inci-*
20 *dence of prison rape. The purpose of these hear-*
21 *ings shall be to collect evidence to aid in the*
22 *identification of common characteristics of both*
23 *victims and perpetrators of prison rape, and the*
24 *identification of common characteristics of pris-*
25 *ons and prison systems with a high incidence of*

1 *prison rape, and the identification of common*
2 *characteristics of prisons and prison systems*
3 *that appear to have been successful in deterring*
4 *prison rape.*

5 *(B) TESTIMONY AT HEARINGS.—*

6 *(i) PUBLIC OFFICIALS.—In carrying*
7 *out the hearings required under subpara-*
8 *graph (A), the Panel shall request the public*
9 *testimony of Federal, State, and local offi-*
10 *cials (and organizations that represent such*
11 *officials), including the warden or director*
12 *of each prison, who bears responsibility for*
13 *the prevention, detection, and punishment*
14 *of prison rape at each entity, and the head*
15 *of the prison system encompassing such*
16 *prison.*

17 *(ii) VICTIMS.—The Panel may request*
18 *the testimony of prison rape victims, orga-*
19 *nizations representing such victims, and*
20 *other appropriate individuals and organi-*
21 *zations.*

22 *(C) SUBPOENAS.—*

23 *(1) ISSUANCE.—The Panel may issue subpoenas*
24 *for the attendance of witnesses and the production of*
25 *written or other matter.*

1 (2) *ENFORCEMENT.*—*In the case of contumacy or*
2 *refusal to obey a subpoena, the Attorney General may*
3 *in a Federal court of appropriate jurisdiction obtain*
4 *an appropriate order to enforce the subpoena.*

5 (c) *REPORTS.*—

6 (1) *IN GENERAL.*—*Not later than June 30 of*
7 *each year, the Attorney General shall submit a report*
8 *on the activities of the Bureau and the Review Panel,*
9 *with respect to prison rape, for the preceding cal-*
10 *endar year to—*

11 (A) *Congress; and*

12 (B) *the Secretary of Health and Human*
13 *Services.*

14 (2) *CONTENTS.*—*The report required under*
15 *paragraph (1) shall include—*

16 (A) *with respect to the effects of prison rape,*
17 *statistical, sociological, and psychological data;*

18 (B) *with respect to the incidence of prison*
19 *rape—*

20 (i) *statistical data aggregated at the*
21 *Federal, State, prison system, and prison*
22 *levels;*

23 (ii) *a listing of those institutions in*
24 *the representative sample, separated into*
25 *each category identified under subsection*

1 (c)(4) and ranked according to the incidence
2 of prison rape in each institution; and

3 (iii) an identification of those institu-
4 tions in the representative sample that ap-
5 pear to have been successful in deterring
6 prison rape; and

7 (C) a listing of any prisons in the rep-
8 resentative sample that did not cooperate with
9 the survey conducted pursuant to section 4.

10 (3) *DATA ADJUSTMENTS.*—In preparing the in-
11 formation specified in paragraph (2), the Attorney
12 General shall use established statistical methods to ad-
13 just the data as necessary to account for differences
14 among institutions in the representative sample,
15 which are not related to the detection, prevention, re-
16 duction and punishment of prison rape, or which are
17 outside the control of the of the State, prison, or pris-
18 on system, in order to provide an accurate compari-
19 son among prisons. Such differences may include the
20 mission, security level, size, and jurisdiction under
21 which the prison operates. For each such adjustment
22 made, the Attorney General shall identify and explain
23 such adjustment in the report.

24 (4) *CATEGORIZATION OF PRISONS.*—The report
25 shall divide the prisons surveyed into three categories.

1 *One category shall be composed of all Federal and*
 2 *State prisons. The other two categories shall be de-*
 3 *finied by the Attorney General in order to compare*
 4 *similar institutions.*

5 *(d) CONTRACTS AND GRANTS.—In carrying out its du-*
 6 *ties under this section, the Attorney General may—*

7 *(1) provide grants for research through the Na-*
 8 *tional Institute of Justice; and*

9 *(2) contract with or provide grants to any other*
 10 *entity the Attorney General deems appropriate.*

11 *(e) AUTHORIZATION OF APPROPRIATIONS.—There are*
 12 *authorized to be appropriated \$15,000,000 for each of fiscal*
 13 *years 2004 through 2010 to carry out this section.*

14 **SEC. 5. PRISON RAPE PREVENTION AND PROSECUTION.**

15 *(a) INFORMATION AND ASSISTANCE.—*

16 *(1) NATIONAL CLEARINGHOUSE.—There is estab-*
 17 *lished within the National Institute of Corrections a*
 18 *national clearinghouse for the provision of informa-*
 19 *tion and assistance to Federal, State, and local au-*
 20 *thorities responsible for the prevention, investigation,*
 21 *and punishment of instances of prison rape.*

22 *(2) TRAINING AND EDUCATION.—The National*
 23 *Institute of Corrections shall conduct periodic train-*
 24 *ing and education programs for Federal, State, and*

1 *local authorities responsible for the prevention, inves-*
 2 *tigation, and punishment of instances of prison rape.*

3 *(b) REPORTS.—*

4 *(1) IN GENERAL.—Not later than September 30*
 5 *of each year, the National Institute of Corrections*
 6 *shall submit a report to Congress and the Secretary*
 7 *of Health and Human Services. This report shall be*
 8 *available to the Director of the Bureau of Justice Sta-*
 9 *tistics.*

10 *(2) CONTENTS.—The report required under*
 11 *paragraph (1) shall summarize the activities of the*
 12 *Department of Justice regarding prison rape abate-*
 13 *ment for the preceding calendar year.*

14 *(c) AUTHORIZATION OF APPROPRIATIONS.—There are*
 15 *authorized to be appropriated \$5,000,000 for each of fiscal*
 16 *years 2004 through 2010 to carry out this section.*

17 **SEC. 6. GRANTS TO PROTECT INMATES AND SAFEGUARD**
 18 **COMMUNITIES.**

19 *(a) GRANTS AUTHORIZED.—From amounts made*
 20 *available for grants under this section, the Attorney General*
 21 *shall make grants to States to assist those States in ensur-*
 22 *ing that budgetary circumstances (such as reduced State*
 23 *and local spending on prisons) do not compromise efforts*
 24 *to protect inmates (particularly from prison rape) and to*
 25 *safeguard the communities to which inmates return. The*

1 *purpose of grants under this section shall be to provide*
2 *funds for personnel, training, technical assistance, data col-*
3 *lection, and equipment to prevent and prosecute prisoner*
4 *rape.*

5 (b) *USE OF GRANT AMOUNTS.—Amounts received by*
6 *a grantee under this section may be used by the grantee,*
7 *directly or through subgrants, only for one or more of the*
8 *following activities:*

9 (1) *PROTECTING INMATES.—Protecting inmates*
10 *by—*

11 (A) *undertaking efforts to more effectively*
12 *prevent prison rape;*

13 (B) *investigating incidents of prison rape;*
14 *or*

15 (C) *prosecuting incidents of prison rape.*

16 (2) *SAFEGUARDING COMMUNITIES.—Safe-*
17 *guarding communities by—*

18 (A) *making available, to officials of State*
19 *and local governments who are considering re-*
20 *ductions to prison budgets, training and tech-*
21 *nical assistance in successful methods for moder-*
22 *ating the growth of prison populations without*
23 *compromising public safety, including successful*
24 *methods used by other jurisdictions;*

1 (B) developing and utilizing analyses of
2 prison populations and risk assessment instru-
3 ments that will improve State and local govern-
4 ments' understanding of risks to the community
5 regarding release of inmates in the prison popu-
6 lation;

7 (C) preparing maps demonstrating the con-
8 centration, on a community-by-community basis,
9 of inmates who have been released, to facilitate
10 the efficient and effective—

11 (i) deployment of law enforcement re-
12 sources (including probation and parole re-
13 sources); and

14 (ii) delivery of services (such as job
15 training and substance abuse treatment) to
16 those released inmates;

17 (D) promoting collaborative efforts, among
18 officials of State and local governments and
19 leaders of appropriate communities, to under-
20 stand and address the effects on a community of
21 the presence of a disproportionate number of re-
22 leased inmates in that community; or

23 (E) developing policies and programs that
24 reduce spending on prisons by effectively reduc-

1 *ing rates of parole and probation revocation*
2 *without compromising public safety.*

3 (c) *GRANT REQUIREMENTS.*—

4 (1) *PERIOD.*—*A grant under this section shall be*
5 *made for a period of not more than 2 years.*

6 (2) *MAXIMUM.*—*The amount of a grant under*
7 *this section may not exceed \$1,000,000.*

8 (3) *MATCHING.*—*The Federal share of a grant*
9 *under this section may not exceed 50 percent of the*
10 *total costs of the project described in the application*
11 *submitted under subsection (d) for the fiscal year for*
12 *which the grant was made under this section.*

13 (d) *APPLICATIONS.*—

14 (1) *IN GENERAL.*—*To request a grant under this*
15 *section, the chief executive of a State shall submit an*
16 *application to the Attorney General at such time, in*
17 *such manner, and accompanied by such information*
18 *as the Attorney General may require.*

19 (2) *CONTENTS.*—*Each application required by*
20 *paragraph (1) shall—*

21 (A) *include the certification of the chief ex-*
22 *ecutive that the State receiving such grant—*

23 (i) *has adopted all national prison*
24 *rape standards that, as of the date on which*

1 the application was submitted, have been
2 promulgated under this Act; and

3 (ii) will consider adopting all national
4 prison rape standards that are promulgated
5 under this Act after such date;

6 (B) specify with particularity the preventa-
7 tive, prosecutorial, or administrative activities to
8 be undertaken by the State with the amounts re-
9 ceived under the grant; and

10 (C) in the case of an application for a
11 grant for one or more activities specified in
12 paragraph (2) of subsection (b)—

13 (i) review the extent of the budgetary
14 circumstances affecting the State generally
15 and describe how those circumstances relate
16 to the State's prisons;

17 (ii) describe the rate of growth of the
18 State's prison population over the preceding
19 10 years and explain why the State may
20 have difficulty sustaining that rate of
21 growth; and

22 (iii) explain the extent to which offi-
23 cials (including law enforcement officials) of
24 State and local governments and victims of
25 crime will be consulted regarding decisions

1 *whether, or how, to moderate the growth of*
2 *the State's prison population.*

3 (e) *REPORTS BY GRANTEE.*—

4 (1) *IN GENERAL.*—*The Attorney General shall*
5 *require each grantee to submit, not later than 90 days*
6 *after the end of the period for which the grant was*
7 *made under this section, a report on the activities*
8 *carried out under the grant. The report shall identify*
9 *and describe those activities and shall contain an*
10 *evaluation of the effect of those activities on—*

11 (A) *the number of incidents of prison rape,*
12 *and the grantee's response to such incidents; and*

13 (B) *the safety of the prisons, and the safety*
14 *of the communities in which released inmates are*
15 *present.*

16 (2) *DISSEMINATION.*—*The Attorney General*
17 *shall ensure that each report submitted under para-*
18 *graph (1) is made available under the national clear-*
19 *inghouse established under section 5.*

20 (f) *STATE DEFINED.*—*In this section, the term “State”*
21 *includes the District of Columbia, the Commonwealth of*
22 *Puerto Rico, and any other territory or possession of the*
23 *United States.*

24 (g) *AUTHORIZATION OF APPROPRIATIONS.*—

1 (1) *IN GENERAL.*—*There are authorized to be ap-*
 2 *propriated for grants under this section \$40,000,000*
 3 *for each of fiscal years 2004 through 2010.*

4 (2) *LIMITATION.*—*Of amounts made available*
 5 *for grants under this section, not less than 50 percent*
 6 *shall be available only for activities specified in para-*
 7 *graph (1) of subsection (b).*

8 **SEC. 7. NATIONAL PRISON RAPE REDUCTION COMMISSION.**

9 (a) *ESTABLISHMENT.*—*There is established a commis-*
 10 *sion to be known as the National Prison Rape Reduction*
 11 *Commission (in this section referred to as the “Commis-*
 12 *sion”).*

13 (b) *MEMBERS.*—

14 (1) *IN GENERAL.*—*The Commission shall be com-*
 15 *posed of 9 members, of whom—*

16 (A) *3 shall be appointed by the President;*

17 (B) *2 shall be appointed by the Speaker of*
 18 *the House of Representatives, unless the Speaker*
 19 *is of the same party as the President, in which*
 20 *case 1 shall be appointed by the Speaker of the*
 21 *House of Representatives and 1 shall be ap-*
 22 *pointed by the minority leader of the House of*
 23 *Representatives;*

24 (C) *1 shall be appointed by the minority*
 25 *leader of the House of Representatives (in addi-*

tion to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph (D)).

(2) *PERSONS ELIGIBLE.*—Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) *CONSULTATION REQUIRED.*—The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

1 (4) *TERM.*—*Each member shall be appointed for*
2 *the life of the Commission.*

3 (5) *TIME FOR INITIAL APPOINTMENTS.*—*The ap-*
4 *pointment of the members shall be made not later*
5 *than 60 days after the date of enactment of this Act.*

6 (6) *VACANCIES.*—*A vacancy in the Commission*
7 *shall be filled in the manner in which the original*
8 *appointment was made, and shall be made not later*
9 *than 60 days after the date on which the vacancy oc-*
10 *curred.*

11 (c) *OPERATION.*—

12 (1) *CHAIRPERSON.*—*Not later than 15 days after*
13 *appointments of all the members are made, the Presi-*
14 *dent shall appoint a chairperson for the Commission*
15 *from among its members.*

16 (2) *MEETINGS.*—*The Commission shall meet at*
17 *the call of the chairperson. The initial meeting of the*
18 *Commission shall take place not later than 30 days*
19 *after the initial appointment of the members is com-*
20 *pleted.*

21 (3) *QUORUM.*—*A majority of the members of the*
22 *Commission shall constitute a quorum to conduct*
23 *business, but the Commission may establish a lesser*
24 *quorum for conducting hearings scheduled by the*
25 *Commission.*

1 (4) *RULES.*—*The Commission may establish by*
 2 *majority vote any other rules for the conduct of Com-*
 3 *mission business, if such rules are not inconsistent*
 4 *with this Act or other applicable law.*

5 (d) *COMPREHENSIVE STUDY OF THE IMPACTS OF*
 6 *PRISON RAPE.*—

7 (1) *IN GENERAL.*—*The Commission shall carry*
 8 *out a comprehensive legal and factual study of the*
 9 *penalogical, physical, mental, medical, social, and*
 10 *economic impacts of prison rape in the United States*
 11 *on—*

12 (A) *Federal, State, and local governments;*
 13 *and*

14 (B) *communities and social institutions*
 15 *generally, including individuals, families, and*
 16 *businesses within such communities and social*
 17 *institutions.*

18 (2) *MATTERS INCLUDED.*—*The study under*
 19 *paragraph (1) shall include—*

20 (A) *a review of existing Federal, State, and*
 21 *local government policies and practices with re-*
 22 *spect to the prevention, detection, and punish-*
 23 *ment of prison rape;*

24 (B) *an assessment of the relationship be-*
 25 *tween prison rape and prison conditions, and of*

1 *existing monitoring, regulatory, and enforcement*
2 *practices that are intended to address any such*
3 *relationship;*

4 *(C) an assessment of pathological or social*
5 *causes of prison rape;*

6 *(D) an assessment of the extent to which the*
7 *incidence of prison rape contributes to the spread*
8 *of sexually transmitted diseases and to the trans-*
9 *mission of HIV;*

10 *(E) an assessment of the characteristics of*
11 *inmates most likely to commit prison rape and*
12 *the effectiveness of various types of treatment or*
13 *programs to reduce such likelihood;*

14 *(F) an assessment of the characteristics of*
15 *inmates most likely to be victims of prison rape*
16 *and the effectiveness of various types of treat-*
17 *ment or programs to reduce such likelihood;*

18 *(G) an assessment of the impacts of prison*
19 *rape on individuals, families, social institutions*
20 *and the economy generally, including an assess-*
21 *ment of the extent to which the incidence of pris-*
22 *on rape contributes to recidivism and to in-*
23 *creased incidence of sexual assault;*

24 *(H) an examination of the feasibility and*
25 *cost of conducting surveillance, undercover ac-*

1 *tivities, or both, to reduce the incidence of prison*
2 *rape;*

3 *(I) an assessment of the safety and security*
4 *of prison facilities and the relationship of prison*
5 *facility construction and design to the incidence*
6 *of prison rape;*

7 *(J) an assessment of the feasibility and cost*
8 *of any particular proposals for prison reform;*

9 *(K) an identification of the need for addi-*
10 *tional scientific and social science research on*
11 *the prevalence of prison rape in Federal, State,*
12 *and local prisons;*

13 *(L) an assessment of the general relation-*
14 *ship between prison rape and prison violence;*

15 *(M) an assessment of the relationship be-*
16 *tween prison rape and levels of training, super-*
17 *vision, and discipline of prison staff; and*

18 *(N) an assessment of existing Federal and*
19 *State systems for reporting incidents of prison*
20 *rape, including an assessment of whether exist-*
21 *ing systems provide an adequate assurance of*
22 *confidentiality, impartiality and the absence of*
23 *reprisal.*

24 *(3) REPORT.—*

1 (A) *DISTRIBUTION.*—Not later than 2 years
2 after the date of the initial meeting of the Com-
3 mission, the Commission shall submit a report
4 on the study carried out under this subsection
5 to—

6 (i) *the President;*

7 (ii) *the Congress;*

8 (iii) *the Attorney General;*

9 (iv) *the Secretary of Health and*
10 *Human Services;*

11 (v) *the Director of the Federal Bureau*
12 *of Prisons;*

13 (vi) *the chief executive of each State;*
14 *and*

15 (vii) *the head of the department of cor-*
16 *rections of each State.*

17 (B) *CONTENTS.*—The report under subpara-
18 graph (A) shall include—

19 (i) *the findings and conclusions of the*
20 *Commission;*

21 (ii) *recommended national standards*
22 *for reducing prison rape;*

23 (iii) *recommended protocols for pre-*
24 *serving evidence and treating victims of*
25 *prison rape; and*

1 (iv) a summary of the materials relied
2 on by the Commission in the preparation of
3 the report.

4 (e) *RECOMMENDATIONS.*—

5 (1) *IN GENERAL.*—In conjunction with the re-
6 port submitted under subsection (d)(3), the Commis-
7 sion shall provide the Attorney General and the Sec-
8 retary of Health and Human Services with rec-
9 ommended national standards for enhancing the de-
10 tection, prevention, reduction, and punishment of
11 prison rape.

12 (2) *MATTERS INCLUDED.*—The information pro-
13 vided under paragraph (1) shall include recommended
14 national standards relating to—

15 (A) the classification and assignment of
16 prisoners, using proven standardized instru-
17 ments and protocols, in a manner that limits the
18 occurrence of prison rape;

19 (B) the investigation and resolution of rape
20 complaints by responsible prison authorities,
21 local and State police, and Federal and State
22 prosecution authorities;

23 (C) the preservation of physical and testi-
24 monial evidence for use in an investigation of
25 the circumstances relating to the rape;

1 (D) acute-term trauma care for rape vic-
2 tims, including standards relating to—

3 (i) the manner and extent of physical
4 examination and treatment to be provided
5 to any rape victim; and

6 (ii) the manner and extent of any psy-
7 chological examination, psychiatric care,
8 medication, and mental health counseling to
9 be provided to any rape victim;

10 (E) referrals for long-term continuity of
11 care for rape victims;

12 (F) educational and medical testing meas-
13 ures for reducing the incidence of HIV trans-
14 mission due to prison rape;

15 (G) post-rape prophylactic medical meas-
16 ures for reducing the incidence of transmission of
17 sexual diseases;

18 (H) the training of correctional staff suffi-
19 cient to ensure that they understand and appre-
20 ciate the significance of prison rape and the ne-
21 cessity of its eradication;

22 (I) the timely and comprehensive investiga-
23 tion of staff sexual misconduct involving rape or
24 other sexual assault on inmates;

1 (J) ensuring the confidentiality of prison
2 rape complaints and protecting inmates who
3 make complaints of prison rape;

4 (K) creating a system for reporting inci-
5 dents of prison rape that will ensure the con-
6 fidentiality of prison rape complaints, protect
7 inmates who make prison rape complaints from
8 retaliation, and assure the impartial resolution
9 of prison rape complaints;

10 (L) data collection and reporting of—

11 (i) prison rape;

12 (ii) prison staff sexual misconduct; and

13 (iii) the resolution of prison rape com-
14 plaints by prison officials and Federal,
15 State, and local investigation and prosecu-
16 tion authorities; and

17 (M) such other matters as may reasonably
18 be related to the detection, prevention, reduction,
19 and punishment of prison rape.

20 (3) *LIMITATION.*—The Commission shall not pro-
21 pose a recommended standard that would impose sub-
22 stantial additional costs compared to the costs pres-
23 ently expended by Federal, State, and local prison
24 authorities.

1 (f) *CONSULTATION WITH ACCREDITATION ORGANIZA-*
 2 *TIONS.—In developing recommended national standards for*
 3 *enhancing the detection, prevention, reduction, and punish-*
 4 *ment of prison rape, the Commission shall consider any*
 5 *standards that have already been developed, or are being*
 6 *developed simultaneously to the deliberations of the Com-*
 7 *mission. The Commission shall consult with accreditation*
 8 *organizations responsible for the accreditation of Federal,*
 9 *State, local or private prisons, that have developed or are*
 10 *currently developing standards related to prison rape. The*
 11 *Commission will also consult with national associations*
 12 *representing the corrections profession that have developed*
 13 *or are currently developing standards related to prison*
 14 *rape.*

15 (g) *HEARINGS.—*

16 (1) *IN GENERAL.—The Commission shall hold*
 17 *public hearings. The Commission may hold such hear-*
 18 *ings, sit and act at such times and places, take such*
 19 *testimony, and receive such evidence as the Commis-*
 20 *sion considers advisable to carry out its duties under*
 21 *this section.*

22 (2) *WITNESS EXPENSES.—Witnesses requested to*
 23 *appear before the Commission shall be paid the same*
 24 *fees as are paid to witnesses under section 1821 of*
 25 *title 28, United State Code. The per diem and mile-*

1 *age allowances for witnesses shall be paid from funds*
2 *appropriated to the Commission.*

3 *(h) INFORMATION FROM FEDERAL OR STATE AGEN-*
4 *CIES.—The Commission may secure directly from any Fed-*
5 *eral department or agency such information as the Commis-*
6 *sion considers necessary to carry out its duties under this*
7 *section. The Commission may request the head of any State*
8 *or local department or agency to furnish such information*
9 *to the Commission.*

10 *(i) PERSONNEL MATTERS.—*

11 *(1) TRAVEL EXPENSES.—The members of the*
12 *Commission shall be allowed travel expenses, includ-*
13 *ing per diem in lieu of subsistence, at rates author-*
14 *ized for employees of agencies under subchapter I of*
15 *chapter 57 of title 5, United States Code, while away*
16 *from their homes or regular places of business in the*
17 *performance of service for the Commission.*

18 *(2) DETAIL OF FEDERAL EMPLOYEES.—With the*
19 *affirmative vote of $\frac{2}{3}$ of the Commission, any Federal*
20 *Government employee, with the approval of the head*
21 *of the appropriate Federal agency, may be detailed to*
22 *the Commission without reimbursement, and such de-*
23 *tail shall be without interruption or loss of civil serv-*
24 *ice status, benefits, or privileges.*

1 (3) *PROCUREMENT OF TEMPORARY AND INTER-*
 2 *MITTENT SERVICES.*—*Upon the request of the Com-*
 3 *mission, the Attorney General shall provide reason-*
 4 *able and appropriate office space, supplies, and ad-*
 5 *ministrative assistance.*

6 (j) *CONTRACTS FOR RESEARCH.*—

7 (1) *NATIONAL INSTITUTE OF JUSTICE.*—*With a*
 8 $\frac{2}{3}$ *affirmative vote, the Commission may select non-*
 9 *governmental researchers and experts to assist the*
 10 *Commission in carrying out its duties under this Act.*
 11 *The National Institute of Justice shall contract with*
 12 *the researchers and experts selected by the Commis-*
 13 *sion to provide funding in exchange for their services.*

14 (2) *OTHER ORGANIZATIONS.*—*Nothing in this*
 15 *subsection shall be construed to limit the ability of the*
 16 *Commission to enter into contracts with other entities*
 17 *or organizations for research necessary to carry out*
 18 *the duties of the Commission under this section.*

19 (k) *SUBPOENAS.*—

20 (1) *ISSUANCE.*—*The Commission may issue sub-*
 21 *poenas for the attendance of witnesses and the produc-*
 22 *tion of written or other matter.*

23 (2) *ENFORCEMENT.*—*In the case of contumacy or*
 24 *refusal to obey a subpoena, the Attorney General may*

1 *in a Federal court of appropriate jurisdiction obtain*
 2 *an appropriate order to enforce the subpoena.*

3 (3) *CONFIDENTIALITY OF DOCUMENTARY EVI-*
 4 *DENCE.—Documents provided to the Commission pur-*
 5 *suant to a subpoena issued under this subsection shall*
 6 *not be released publicly without the affirmative vote*
 7 *of 2/3 of the Commission.*

8 (l) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 9 *authorized to be appropriated such sums as may be nec-*
 10 *essary to carry out this section.*

11 (m) *TERMINATION.—The Commission shall terminate*
 12 *on the date that is 60 days after the date on which the Com-*
 13 *mission submits the reports required by this section.*

14 (n) *EXEMPTION.—The Commission shall be exempt*
 15 *from the Federal Advisory Committee Act.*

16 **SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.**

17 (a) *PUBLICATION OF PROPOSED STANDARDS.—*

18 (1) *FINAL RULE.—Not later than 1 year after re-*
 19 *ceiving the report specified in section 7(d)(3), the At-*
 20 *torney General shall publish a final rule adopting na-*
 21 *tional standards for the detection, prevention, reduc-*
 22 *tion, and punishment of prison rape.*

23 (2) *INDEPENDENT JUDGMENT.—The standards*
 24 *referred to in paragraph (1) shall be based upon the*
 25 *independent judgment of the Attorney General, after*

1 *giving due consideration to the recommended national*
 2 *standards provided by the Commission under section*
 3 *7(e), and being informed by such data, opinions, and*
 4 *proposals that the Attorney General determines to be*
 5 *appropriate to consider.*

6 (3) *LIMITATION.—The Attorney General shall*
 7 *not establish a national standard under this section*
 8 *that would impose substantial additional costs com-*
 9 *pared to the costs presently expended by Federal,*
 10 *State, and local prison authorities. The Attorney Gen-*
 11 *eral may, however, provide a list of improvements for*
 12 *consideration by correctional facilities.*

13 (4) *TRANSMISSION TO STATES.—Within 90 days*
 14 *of publishing the final rule under paragraph (1), the*
 15 *Attorney General shall transmit the national stand-*
 16 *ards adopted under such paragraph to the chief execu-*
 17 *tive of each State, the head of the department of cor-*
 18 *rections of each State, and to the appropriate authori-*
 19 *ties in those units of local government who oversee op-*
 20 *eration in one or more prisons.*

21 (b) *APPLICABILITY TO FEDERAL BUREAU OF PRIS-*
 22 *ONS.—The national standards referred to in subsection (a)*
 23 *shall apply to the Federal Bureau of Prisons immediately*
 24 *upon adoption of the final rule under subsection (a)(4).*

25 (c) *ELIGIBILITY FOR FEDERAL FUNDS.—*

1 (1) *COVERED PROGRAMS.*—

2 (A) *IN GENERAL.*—*For purposes of this sub-*
3 *section, a grant program is covered by this sub-*
4 *section if, and only if—*

5 (i) *the program is carried out by or*
6 *under the authority of the Attorney General;*
7 *and*

8 (ii) *the program may provide amounts*
9 *to States for prison purposes.*

10 (B) *LIST.*—*For each fiscal year, the Attor-*
11 *ney General shall prepare a list identifying each*
12 *program that meets the criteria of subparagraph*
13 *(A) and provide that list to each State.*

14 (2) *ADOPTION OF NATIONAL STANDARDS.*—*For*
15 *each fiscal year, any amount that a State would oth-*
16 *erwise receive for prison purposes for that fiscal year*
17 *under a grant program covered by this subsection*
18 *shall be reduced by 5 percent, unless the chief execu-*
19 *tive of the State submits to the Attorney General—*

20 (A) *a certification that the State has adopt-*
21 *ed, and is in full compliance with, the national*
22 *standards described in section 8(a); or*

23 (B) *an assurance that not less than 5 per-*
24 *cent of such amount shall be used only for the*
25 *purpose of enabling the State to adopt, and*

1 *achieve full compliance with, those national*
2 *standards, so as to ensure that a certification*
3 *under subparagraph (A) may be submitted in fu-*
4 *ture years.*

5 (3) *REPORT ON NONCOMPLIANCE.*—*Not later*
6 *than September 30 of each year, the Attorney General*
7 *shall publish a report listing each grantee that is not*
8 *in compliance with the national standards adopted*
9 *pursuant to section 8(a).*

10 (4) *COOPERATION WITH SURVEY.*—*For each fis-*
11 *cal year, any amount that a State receives for that*
12 *fiscal year under a grant program covered by this*
13 *subsection shall not be used for prison purposes (and*
14 *shall be returned to the grant program if no other au-*
15 *thorized use is available), unless the chief executive of*
16 *the State submits to the Attorney General a certifi-*
17 *cation that neither the State, nor any political sub-*
18 *division or unit of local government within the State,*
19 *is listed in a report issued by the Attorney General*
20 *pursuant to section 4(c)(2)(C).*

21 (5) *REDISTRIBUTION OF AMOUNTS.*—*Amounts*
22 *under a grant program not granted by reason of a re-*
23 *duction under paragraph (2), or returned by reason*
24 *of the prohibition in paragraph (4), shall be granted*
25 *to one or more entities not subject to such reduction*

1 or such prohibition, subject to the other laws gov-
 2 erning that program.

3 (6) *IMPLEMENTATION.*—*The Attorney General*
 4 *shall establish procedures to implement this sub-*
 5 *section, including procedures for effectively applying*
 6 *this subsection to discretionary grant programs.*

7 (7) *EFFECTIVE DATE.*—

8 (A) *REQUIREMENT OF ADOPTION OF STAND-*
 9 *ARDS.*—*The first grants to which paragraph (2)*
 10 *applies are grants for the second fiscal year be-*
 11 *ginning after the date on which the national*
 12 *standards under section 8(a) are finalized.*

13 (B) *REQUIREMENT FOR COOPERATION.*—
 14 *The first grants to which paragraph (4) applies*
 15 *are grants for the fiscal year beginning after the*
 16 *date of the enactment of this Act.*

17 **SEC. 9. REQUIREMENT THAT ACCREDITATION ORGANIZA-**
 18 **TIONS ADOPT ACCREDITATION STANDARDS.**

19 (a) *ELIGIBILITY FOR FEDERAL GRANTS.*—*Notwith-*
 20 *standing any other provision of law, an organization re-*
 21 *sponsible for the accreditation of Federal, State, local, or*
 22 *private prisons, jails, or other penal facilities may not re-*
 23 *ceive any new Federal grants during any period in which*
 24 *such organization fails to meet any of the requirements of*
 25 *subsection (b).*

1 (b) *REQUIREMENTS.*—*To be eligible to receive Federal*
2 *grants, an accreditation organization referred to in sub-*
3 *section (a) must meet the following requirements:*

4 (1) *At all times after 90 days after the date of*
5 *enactment of this Act, the organization shall have in*
6 *effect, for each facility that it is responsible for ac-*
7 *crediting, accreditation standards for the detection,*
8 *prevention, reduction, and punishment of prison*
9 *rape.*

10 (2) *At all times after 1 year after the date of the*
11 *adoption of the final rule under section 8(a)(4), the*
12 *organization shall, in addition to any other such*
13 *standards that it may promulgate relevant to the de-*
14 *tection, prevention, reduction, and punishment of*
15 *prison rape, adopt accreditation standards consistent*
16 *with the national standards adopted pursuant to such*
17 *final rule.*

18 **SEC. 10. DEFINITIONS.**

19 *In this Act, the following definitions shall apply:*

20 (1) *CARNAL KNOWLEDGE.*—*The term “carnal*
21 *knowledge” means contact between the penis and the*
22 *vulva or the penis and the anus, including penetra-*
23 *tion of any sort, however slight.*

24 (2) *INMATE.*—*The term “inmate” means any*
25 *person incarcerated or detained in any facility who*

1 *is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or*
 2 *the terms and conditions of parole, probation, pretrial*
 3 *release, or diversionary program.*

5 (3) *JAIL.*—*The term “jail” means a confinement facility of a Federal, State, or local law enforcement agency to hold—*

8 (A) *persons pending adjudication of criminal charges; or*

10 (B) *persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.*

13 (4) *HIV.*—*The term “HIV” means the human immunodeficiency virus.*

15 (5) *ORAL SODOMY.*—*The term “oral sodomy” means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.*

18 (6) *POLICE LOCKUP.*—*The term “police lockup” means a temporary holding facility of a Federal, State, or local law enforcement agency to hold—*

21 (A) *inmates pending bail or transport to jail;*

23 (B) *inebriates until ready for release; or*

24 (C) *juveniles pending parental custody or shelter placement.*

1 (7) *PRISON*.—The term “prison” means any con-
 2 finement facility of a Federal, State, or local govern-
 3 ment, whether administered by such government or by
 4 a private organization on behalf of such government,
 5 and includes—

6 (A) any local jail or police lockup; and

7 (B) any juvenile facility used for the cus-
 8 tody or care of juvenile inmates.

9 (8) *PRISON RAPE*.—The term “prison rape” in-
 10 cludes the rape of an inmate in the actual or con-
 11 structive control of prison officials.

12 (9) *RAPE*.—The term “rape” means—

13 (A) the carnal knowledge, oral sodomy, sex-
 14 ual assault with an object, or sexual fondling of
 15 a person, forcibly or against that person’s will;

16 (B) the carnal knowledge, oral sodomy, sex-
 17 ual assault with an object, or sexual fondling of
 18 a person not forcibly or against the person’s will,
 19 where the victim is incapable of giving consent
 20 because of his or her youth or his or her tem-
 21 porary or permanent mental or physical inca-
 22 pacity; or

23 (C) the carnal knowledge, oral sodomy, sex-
 24 ual assault with an object, or sexual fondling of
 25 a person achieved through the exploitation of the

1 *fear or threat of physical violence or bodily in-*
2 *jury.*

3 (10) *SEXUAL ASSAULT WITH AN OBJECT.*—*The*
4 *term “sexual assault with an object” means the use of*
5 *any hand, finger, object, or other instrument to pene-*
6 *trate, however slightly, the genital or anal opening of*
7 *the body of another person.*

8 (11) *SEXUAL FONDLING.*—*The term “sexual*
9 *fondling” means the touching of the private body*
10 *parts of another person (including the genitalia,*
11 *anus, groin, breast, inner thigh, or buttocks) for the*
12 *purpose of sexual gratification.*

13 (12) *EXCLUSIONS.*—*The terms and conditions*
14 *described in paragraphs (9) and (10) shall not apply*
15 *to—*

16 (A) *custodial or medical personnel gath-*
17 *ering physical evidence, or engaged in other le-*
18 *gitimate medical treatment, in the course of in-*
19 *vestigating prison rape;*

20 (B) *the use of a health care provider’s hands*
21 *or fingers or the use of medical devices in the*
22 *course of appropriate medical treatment unre-*
23 *lated to prison rape; or*

24 (C) *the use of a health care provider’s hands*
25 *or fingers and the use of instruments to perform*

1 *body cavity searches in order to maintain secu-*
2 *urity and safety within the prison or detention fa-*
3 *cility, provided that the search is conducted in*
4 *a manner consistent with constitutional require-*
5 *ments.*

Union Calendar No. 121

108TH CONGRESS
1ST SESSION

H. R. 1707

[Report No. 108-219]

A BILL

To provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.

JULY 18, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed